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SEP 08 2004

**FROMMER LAWRENCE & HAUG LLP**

745 Fifth Avenue  
New York, New York 10151  
Telephone: (212) 588-0800  
Facsimile: (212) 588-0500  
E-mail: Firm@flhlaw.com

**FACSIMILE COVER LETTER**

**To:** Jennifer A. Leung  
**Firm:** PTO  
**Facsimile:** 703 872-9306  
**From:** Christian M. Smolizza  
**Date:** September 8, 2004  
**Re:** U.S. Patent Application  
Serial No. 09/751,512  
Our Ref. No. 120301-2382A

**Number of Pages:** 4  
(including cover page)

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CENTRAL FAX CENTER**SEP 08 2004 PATENT  
120301-2382A**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Espeillac et al.  
Serial No. : 09/751,512  
Filed : December 29, 2000  
Title : PROCESS FOR HYDROTREATING A  
HYDROCARBON FEEDSTOCK AND APPARATUS  
FOR CARRYING OUT SAME  
Group Art Unit : 1764  
Examiner : Jennifer A Leung

745 Fifth Avenue  
New York, NY 10151**EXPEDITED PROCEDURE**  
**RESPONSE AFTER FINAL ACTION****FACSIMILE**

I hereby certify that this paper is being facsimile transmitted to  
the Patent and Trademark Office on the date shown below.

CHRISTIAN SMOLITZ Pa. No. 416319  
Name of person signing certification  
Jennifer A Leung  
Signature

September 8, 2004

Date of Signature

**COMMUNICATION MAKING OF RECORD**  
**TELEPHONIC DISCUSSION WITH SPE**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This Communication is in response to the July 16, 2004 Advisory Action and to make of  
record a telephone discussion with SPE Glenn Caldarola.

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**REMARKS**

This is to make of record the telephone discussion with SPE Glenn Caldarola on July 28, 2004.

SPE Glenn Caldarola is thanked for reviewing the prosecution of this application. Specifically, claims 11, 12 and 15-20 were rejected under 35 U.S.C. 102(e) as being allegedly anticipated by U.S. Patent No. 5,720,872 to Gupta. ("Gupta"). In addition, claim 13 was rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gupta in view of Lacy et al. (US Patent No. 3,314,879). Further, claims 14 and 21 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gupta in view of Lacy, further in view of Egloff (US Patent No. 1,707,349).

As shown by previous submission, the present application claims priority to French Patent Application No. 96/16290, filed on December 31, 1996; and, the present invention has a December 31, 1996 effective filing date.

From the July 28, 2004 discussion, it is believed that SPE Glenn Caldarola's view is that Gupta is not available against the present application because the effective filing date of the instant application antedates the effective filing date of Gupta. Further, it is believed that SPE Glenn Caldarola's view is that "antedate" means "on or before".

Specifically, under MPEP 706.02(b) a rejection based on 35 U.S.C. 102(e) can be overcome by: . . .

(E) Perfecting a claim to priority under 35 U.S.C. 119 (a)-(d) within the time period set in 37 CFR 1.55(a)(1) . . . The foreign priority filing date must antedate the reference and be perfected . . .

(Advisory Action at 3).

The instant application has an effective filing date of December 31, 1996. In addition, Gupta has an effective filing date of December 31, 1996. Because the instant invention's effective filing date falls on the same date as Gupta's effective filing date, the instant application antedates Gupta. Thus, Gupta is not available against the instant application.

Accordingly, reconsideration and withdrawal of the art rejections under 35 U.S.C. §§ 102(e) and 103 as to Gupta are respectfully requested.

SPE Glenn Caldarola is again thanked for the courtesies extended during the telephonic discussion.

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**CONCLUSION**

The remarks herein place the application in condition for allowance. Consideration and entry of this paper and early and favorable reconsideration of the application, and prompt issuance of a Notice of Allowance, are earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP  
Attorney for Applicants

By: 

Thomas J. Kowalski  
Reg. No. 32,147  
Christian M. Smolizza  
Reg. No. 46,319  
(212) 588-0800

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